

Marcia M. Waldron
Clerk

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
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January 20, 2005

Mrs. Mary D'Andrea
U.S. District Court for the Middle District of Pennsylvania
Middle District of Pennsylvania
228 Walnut Street
Room 1060
Harrisburg, PA 17108

RE: Docket No. 04-2843
Morsley vs. Romine
D.C. No. 01-cv-01003

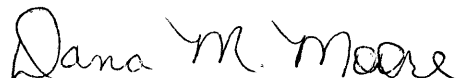
Dear Mrs. D'Andrea:

Enclosed is a certified copy of the judgment together with copy of the opinion in the above-entitled case(s). The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Kindly acknowledge receipt for same on the enclosed copy of this letter.

Counsel are advised of the issuance of the mandate by copy of this letter. A copy of the certified judgment is also enclosed showing costs taxed, if any.

Very truly yours,
MARCIA M. WALDRON
Clerk



By: Dana M. Moore
Case Manager

Enclosure
cc:

Mr. Allen Morsley
Stephen R. Cerutti II, Esq.

BPS-22

UNREPORTED-NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 04-2843

ALLEN MORSLEY,
Appellant,

v.

DONALD ROMINE

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civil No. 01-cv-01003)
District Judge: Honorable Yvette Kane

Submitted For Possible Summary Action
Under Third Circuit LAR 27.4 and I.O.P. 10.6
October 28, 2004

Before: RENDELL, FISHER and VAN ANTWERPEN, Circuit Judges.

(Filed November 9, 2004)

OPINION OF THE COURT

PER CURIAM

Pro se appellant Allen Morsley, a federal prisoner currently incarcerated at the United States Penitentiary at Jonesville, Virginia, appeals the April 30, 2004 order of the United States District Court for the Middle District of Pennsylvania denying his motion to

reconsider the March 1, 2004 order denying several motions filed in the proceedings on his petition for writ of habeas corpus: a motion to alter or amend judgment, a motion to appoint counsel, and a motion to amend to conform to evidence.¹

Our review in this appeal is limited to the question whether the District Court properly denied Morsley's motion to reconsider the denial of his motion to appoint counsel and his motion to amend. We cannot review the District Court's order to the extent Morsley seeks to appeal the denial of his motion to reconsider the denial of his motion to alter or amend judgment. Under Rule 59(e), Federal Rules of Civil Procedure, a motion for reconsideration must be filed within ten days of the date of entry of the final order; an untimely motion for reconsideration is "void and of no effect." Amatangelo v. Borough of Donora, 212 F.2d 776, 780 (3d Cir. 2000). Here, Morsley sought not only to alter or amend the judgment, but also to have the District Court reconsider the denial of his motion to alter or amend. Such a motion will not toll the time to appeal the judgment. See Turner v. Evers, 726 F.2d 112, 114 (3d Cir. 1984). The order denying Morsley's timely motion to alter or amend judgment was entered on March 1, 2004, but Morsley did not sign and date the notice of appeal in this matter until July 28, 2004. We observe that Morsley's appeal from the District Court's orders denying his habeas petition and his motion to alter or amend judgment is pending at C.A. No. 04-2249.

¹ At the time he filed his habeas petition pursuant to 28 U.S.C. § 2241, Morsley was confined at the United States Penitentiary at Lewisburg, Pennsylvania. He therefore filed his section 2241 proceeding in the district of his confinement at that time.

We now turn to the denial of Morsley's motion to reconsider the denial of his motion to appoint counsel and motion to amend to conform to evidence. After considering Morsley's objections to possible summary affirmance of the District Court's order, and upon careful review of the record, we find no reversible error and no abuse of discretion. Accordingly, because this appeal presents us with "no substantial question," we will summarily affirm the District Court's order denying Morsley's motion for reconsideration. See 3d Cir. LAR 27.4 and I.O.P. 10.6.

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October 28, 2004

Before: RENDELL, FISHER and VAN ANTWERPEN, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania. On consideration whereof, it is now here

ORDERED and ADJUDGED by this Court that the order of the District Court entered April 30, 2004, be and the same is hereby AFFIRMED. All of the above in accordance with the opinion of this Court.

ATTEST:



Acting Clerk

Dated: November 9, 2004

Page 2

Morlsey v. Romine

Docket No. 04-2843

**Certified as a true copy and issued in lieu
of a formal mandate on January 20, 2005**

Teste: *Marcia M. Waldron*

Clerk, U.S. Court of Appeals for the Third Circuit.